

Agenda

Item #4



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: March 21, 2011
Re: Policy Issue Raised by Seth Berner

Seth Berner was a Green-Independent candidate for the State House of Representatives in 2010. He maintains that, in 2010, the Maine Republican and Democratic Parties encouraged candidates to purchase printed campaign materials from certain vendors. As a result, he argues, the candidates paid significantly less for campaign materials because of the large volume purchases.

Mr. Berner contends that this practice puts Green and independent candidates at a disadvantage. He argues that this subverts the intention of the Maine Clean Election Act program, which is to maintain an even playing field among candidates in a race.

Mr. Berner appears to be bringing up the issue as a matter of policy, not enforcement. In such a context, I was not inclined to interview the Democratic and Republican parties in depth concerning the tactics and strategies they developed for their 2010 candidates, which they presumably would wish to keep private. I did speak to the current director of the House Democratic Campaign Committee. He did not hold the position in 2010.

Based on my conversation with the Democratic campaign director, there is a possibility that Mr. Berner has overestimated the purchases by his opponent, Stephen Lovejoy. I was told that the products Mr. Lovejoy purchased for \$3,000 were probably much less extensive than three mailings to every address in the district. Also, Mr. Lovejoy's purchases were not necessarily representative of all purchases by 2010 Democratic candidates for the House. Some House candidates purchased 1, 2, 3, or 4 mailings from

Bridge Communications. Each House candidate who bought materials from that firm was free to buy whatever they wanted.

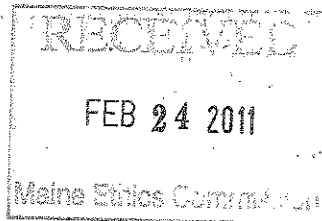
Overall, the Commission staff is unsure whether Mr. Berner has raised a problem that can be addressed by the Commission. The Maine Clean Election Act program is designed in a way that candidates within a single legislative race will have roughly the same financial resources – up to a certain point. The goal of equalizing financial resources among candidates, however, is difficult to perfect. Our general understanding is that recent court decisions have cast doubt whether equalizing candidates' finances is even an important public goal that state governments should pursue. (The expected court decision concerning matching funds in Arizona's public financing program should shed light on this.)

Thank you for your consideration of this memo.

Seth Berner • 169 Clinton Street • Portland, ME 04103 • (207) 775-2452 • sberner@gwi.net

February 21, 2011

Jonathan Wayne
State of Maine
Department of Governmental Ethics
State House Station 135
Augusta, ME 04333



Dear Mr. Wayne:

This had been sent to you by email on January 26 but I have not gotten any indication that you received it.

I was the Green Independent candidate for Maine House District 115 in 2010, and was a Clean Elections candidate. My opponents were a privately-financed Republican who did not raise any money or campaign; and a Clean Elections Democrat. As the election neared I determined that my Democratic opponent and I had generated about the same quantity of publicity materials - not surprisingly, since as Clean Elections candidates with no primary challenger we had the same amount of money to work with, other than differences in seed money raised. However, in the last week of the campaign, when I was out of money, my opponent suddenly placed a large number of new lawn signs and mailed an additional card to everyone in the district.

Upon researching I discovered that my Democratic opponent had spent \$3,000 with a firm called Bridge Communications in Newington, CT, and that for the amount he spent with them he got three union-produced, full-color 8 1/2" by 5 1/2" cards mailed to every address in the district. Through my own experience I knew that the cost of that kind of publicity for a district with the number of addresses in District 115 was close to \$4,500 on the open market. Mr. Lovejoy had about \$1500 left at the end because he had not needed to spend it earlier.

Further research revealed that 105 of 130 clean elections Democratic House candidates had also spent similar sums with Bridge Communications - and that no clean elections Democratic Senate candidate or candidate from outside the Democratic Party had spent any money with the firm. Moreover, 24 of 27 Democratic Senate clean elections candidates had spent their funds with Ourso, Beychok and Johnson of Baton Rouge, LA - and that no clean elections Democratic House candidate or candidate from outside the Democratic Party had spent any money with the firm; and that 64 of 131 clean elections Republican candidates for House and Senate had spent money with Spectrum Marketing in Manchester, NH - and that no clean elections candidate from outside the Republican Party had spent any money with that firm.

The major parties had Coordinated Campaigns that encouraged their candidates to agree in advance to buy into publicity packages the parties might be able to negotiate. The purpose of this was to be able to cash in on the buying power of large volume purchases. Had a candidate shopped on his own he would have found prices much as I described above. But when a Coordinated Campaign could tell a potential printing company that the party could deliver 105 House candidates then the price each candidate would have to pay would be significantly less. A similar dynamic took place on behalf of clean elections Democratic Senate candidates, and clean elections Republican candidates for both House and Senate. Based on the raw data, each Coordinated Campaign had obtained prices that would be available to members of that CC and to

no one else in Maine.

Clean Elections law is designed to reduce the effect of money on elections by ensuring that participating candidates will all be on a level playing field. Reducing the amount spent is one objective, but ensuring fairness is another. If a candidate agrees to play by a pre-established set of rules but then finds that the rules put him at a serious disadvantage then the candidate has no incentive to play by those rules. When I agreed to run as a Clean Elections candidate I expected that I would be in a financially even battle with opponents who had also agreed to run as such, only to discover that I and every other MGIP and unenrolled candidate could not buy what our clean elections Democratic and Republican candidates could buy.

In theory the MGIP could run 105 candidates for House also and get a similar discount. In practice that has never happened, and will not happen: running 25 candidates would be a tremendous increase in our activity (we did not field even 15 House candidates in 2010). It is not clear how unenrolled candidates, who might have wildly divergent philosophies, could ever gain the buying power available to the Democratic and Republican Parties. In practice, the Clean Elections program is permitting the bigger parties to enjoy a big financial advantage over candidates from outside those parties; and there is nothing a candidate from outside the big parties, who wishes to run as a Clean Elections candidate, can do about it.

In short, I believe that the Democratic and Republican Coordinated Campaigns subvert the intent of the Clean Elections program. Feel free to contact me if you would like me to clarify anything. And please let me know what I need to do to formally present the question to the Commission.

A copy of this letter was originally sent to the Maine Green Independent Party.

Sincerely,



Seth Berner